

August 2, 2011

**VIA U.S. MAIL**

Honorable Andrew R. Davis  
Chief of the Division of Interpretation and Standards  
United States Department of Labor  
Office of Labor-Management Standards  
200 Constitution Avenue, NW  
Room N-5609  
Washington, D.C. 20210

Re: ***Comments Regarding Proposed Regulations; 29 CFR Parts 405 and 406***  
***RIN 1215-AB79***  
***RIN 1245-AA03***

Dear Mr. Davis:

Please be advised that I believe the proposed regulations improperly and erroneously interpret and expand the provisions regarding the “Advice” exemption pursuant to Section 203(c) of the Labor-Management Reporting and Disclosure Act (“LMRDA”), 29 U.S.C. §433(c).

Section 433(c) states:

Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

The foregoing “exemption,” from filing the LM-20 is precisely the activities that most management side labor attorneys, including the undersigned, engage in on behalf of their clients.

Under the statute a “persuader” is a person, including an attorney, who has been retained by an employer to:

“ . . . to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer . . .”

The proposed rule change would expand the foregoing “persuader” activity to include advice and counseling in connection with communications with employees. This change would prevent attorneys from providing advice to his/her client as to what can lawfully be stated in communication with the employees. While the underlying communication, drafted by the employer is obviously an attempt to persuade employees, an attorney’s review and editing of that communication is legal advice and not persuader activity. The proposed change in the reporting requirement in this situation would directly interfere with the attorney-client relationship.

I respectfully submit that the proposed change be modified to eliminate any reference to revising, editing, reviewing, or advising employers on its communications with its employees, so long as that revision does not “enhance” the message. Merely editing any communications to insure that the communication is lawful, does not “enhance” the message.

In addition, the proposed changes would attach “persuader” activity to training employers’ managerial and supervisory employees in connection with lawful and unlawful activity in the context of a union organizing campaign and/or NLRB Petition.

This unnecessary expansion of the rule to “muddy” the distinction between advice and enhancement is obviously a politically motivated change and designed to provide assistance to labor organizations in any organizing campaign. This change is not neutral and modifies the intent and protections afforded by the LMRDA.

In conclusion, management-side labor attorneys should be exempt from any reporting requirements, absent evidence that the attorney actually engaged in persuader activity. The burden to determine whether an attorney is required to file an LM-20 should be on the person or party asserting that the attorney engaged in such activity. Absent any finding of such activity, attorneys should be exempt from any reporting requirements.

I have been practicing labor law for approximately 35 years, including almost four years as a Staff Attorney with the National Labor Relations Board. I find the proposed expansion of the reporting requirements as offensive and politically motivated and unlawfully beyond the scope of the LMRDA.

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Respectfully submitted,

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